

In the High Court of Judicature at Madras

Dated: 04.1.2007

Coram:

The Honourable Mr.Justice M.E.N.PATRUDU

Writ Petition Nos. 9748 and 9749 of 2006
and

W.P.M.P.No.10886 of 2006 and W.V.M.P.No.1412 of 2006

1. Dr.Nandu Dwarakasingh Chhabria

2. M/s. Inter Equipment India Pvt. Ltd.

rep. by its Director Mr.Shyam

D.Chhabria,

No.262, Maker Tower-'B'

Cuffe Parade, Mumbai-400 021.

.... Petitioners in both W.Ps.

1. M/s. Vijaya Bank,

Mayo Hall Branch,

PU Building,

MG Road, Bangalore-560 001.

2. Debt Recovery Appellate Tribunal,

Indian Bank Building,

4th Floor, 55, Ethiraj Salai,

Chennai-600 008.

.... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue (1) a Writ of Certiorari to call for the records of the order of the second Respondent dated 20th January, 2006 and 10th March 2006 and to quash the said orders in URA No.44 of 2005 and (2) a writ of mandamus directing the first respondent to reinstate in the name of the first petitioner 13,800 shares each of (a) Reliance Industries Ltd., (b) Reliance Natural Resources, (c) Reliance Energy Ventures Ltd., (d) Reliance Capital Ventures Ltd., and (e) Reliance Communication Ventures Ltd.

For Petitioners

For Respondents No.1

.. Mr.P.R.Seetharam

.. Mr.OM Prakash for

M/s. Ramalingam and

Associates.

COMMON ORDER

1.00 The Common question is involved in both the writ petitions. Hence common order is passed.

2.00 The petitioners obtained an overdraft loan from the first respondent viz., M/s. Vijaya Bank to an extent of 25.00 lakhs on 16.1.1989. According to the petitioners the loan was sanctioned for paying the amount directly to the Customs authority, debiting the loan account of the petitioners herein towards security for due repayment. The petitioners pledged 6,900 fully paid up equity shares of Reliance which are in the name of the first petitioner. The petitioners have also pledged other property and according to the petitioners it is valued at Rs.14,67,000/- and it belonged to the second petitioner. It was also agreed to mortgage the imported stock worth Rs.50,00,000/- which will be cleared from the customs. A corporate guarantee was also provided.

3.00 The contention of the petitioner is that the first respondent's agent M/s. Rajeswari Shipping Agencies did not clear the goods from the customs and the goods were sold by the Customs Authorities by auction. Therefore, the bank neither did pay the customs duty nor organise any payment against the sanctioned loan directly to the petitioner save and except debiting to the account of the petitioner. Thus it is clear Rs.25,00,000/- have been debited to the account of the petitioner.

4.00 Thus, there were disputes and the respondent bank filed a civil suit in O.S.No.6247 of 1992 in the City Civil Court, Bangalore against the petitioners for recovery and the same was transferred to the Debt Recovery Tribunal, at Bangalore and renumbered as O.A.No.916 of 1995 and the judgment was pronounced on 5.9.2002, wherein it was held that the bank is entitled to receive Rs.55,58,386.00 from the petitioner. The judgment also discloses that in case of failure to pay the amount, the 69000 shares shall be sold and the proceedings shall be adjusted in discharge of the liability quantified in the order. The petitioner filed a Review petition against the judgment and the same was disposed of on 14.10.2004.

5.00 The contention of the petitioner is that the stand of the bank is that they did not sell the shares during the pendency of the proceedings before the Debt Recovery Tribunal.

6.00 The petitioner has preferred appeals before the Appellate Tribunal at Chennai and it is Unregistered Appeal Nos.44 of 2005 and R.A.No.49 of 2005.

7.00 It appears the petitioner has filed an application under Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act 1993 seeking exemption from depositing 75% of the amount determined by the Debt Recovery Tribunal as due to the bank on the ground that 6900 shares

pledged with the bank had become 13800 shares by way of issue of bonus shares and the value of the shares have been increased.

8.00 When the matter was taken up for hearing before the second Respondent, the bank has submitted that the shares have already been sold and an affidavit was filed on 16th November, 2005 stating that the shares were sold on 18.9.2000 and 18.10.2000 for a total sum of Rs.47,57,575.00 together with the dividend received and a total sum of Rs.48,85,111.00 have been credited to the account of the petitioner.

9.00 Then the second Respondent directed the petitioner to deposit Rs.10,00,000.00. Then the petitioner filed an application under Section 22(2)(e) read with Section 22(2)(h) and 21 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 seeking appropriate reliefs recalling the order of the second Respondent and grant complete exemption to the petitioner from depositing the amount as required under Section 21 of the Act.

10.00 The contention of the petitioner is that the bank could not have sold the shares but when the matter came up before the second Respondent the prayer of petitioner was dismissed by the second Respondent on 10.3.2006. Therefore, the petitioner filed the writ petitions.

11.00 The preliminary objection taken by the respondents is that the writ petitions are not maintainable as the writ petitions will not lie before the High Court of Madras for want of territorial jurisdiction.

12.00 The contention of the respondents is that the bank has filed the suit in City Civil Court Bangalore and the same was transferred to the Debt Recovery Tribunal, Bangalore and the decree was passed by the Debt Recovery Tribunal, Bangalore and appeal filed by the petitioner challenging the decree and judgment of the Debt Recovery Tribunal, Bangalore is pending before the appellate Tribunal and they are still unnumbered and until and unless the appeals are numbered by the appellate Tribunal, the petitioner cannot file any further applications seeking waiver of pre-deposit.

13.00 The forcible contention of the Respondents is that the judgment and decree is passed by the Debt Recovery Tribunal at Bangalore and aggrieved by the same the petitioner filed an appeal before the Appellate Tribunal at Chennai and the same is still pending at the stage of unnumber hence the petitioner is not entitled to file the writ petitions before this Court as the original cause arose in Bangalore and proceedings are initiated in Bangalore and orders were passed at Bangalore and the appeal before the Appellate Tribunal also arises from the jurisdiction of the Bangalore Debt Recovery Tribunal.

14.00 It is an admitted fact that the Appellate Tribunal is for more than one State and they including the State of Karnataka and the Appellate Authority has power to have it sitting at Bangalore also.

15.00 Heard the arguments of both sides on this preliminary issue. This issue is covered by the recent judgment of this Court.

16.00 The Division Bench of this Court in //Bhanu Construction Co. Pvt. Ltd. & others vs. Andhra Bank and others// (II(2006) BC 191 (DB) held as follows:

"7. The principal question, that arises for consideration, is the following :

"Whether the petitioners are entitled to file Writ Petitions in this Madras High Court, even though the original orders were passed by the Debts Recovery Tribunal at Hyderabad, Andhra Pradesh, merely because the Debts Recovery Appellate Tribunal, which confirmed the said original orders, is situated at Chennai, within the territorial jurisdiction of this Court?"

8. The core of the contention, urged by Mr.B.Kumar, learned Senior Counsel for the petitioners, is two fold, which is as follows :

(i) The order impugned is passed by the Debts Recovery Appellate Tribunal, which is situated at Chennai, within the territory, in relation to which the Madras High Court exercises jurisdiction and, therefore, the Writ Petitions are maintainable under Article 226 (1) of the Constitution of India.

(ii) Though the order of the Debts Recovery Tribunal, Hyderabad, was challenged before the Debts Recovery Appellate Tribunal, when the Appellate Tribunal at Chennai disposed of the appeal, the said order of the Tribunal at Hyderabad gets merged with the order passed by the Appellate Tribunal; as such, the moment the order passed by the Appellate Tribunal at Chennai, giving a finding with reference to the order passed by the Tribunal at Hyderabad, the substantial cause of action would arise at Chennai also and, as such, the Writ Petitions are maintainable in this Madras High Court, under Article 226 (2) of the Constitution of India.

9. The gist of the reply for the above two points, given by Mr.A.L.Somayaji, learned Senior Counsel for the respondents, is as follows :

(i) Under Article 226 (1) of the Constitution, the High Court's jurisdiction depends upon the seat of the authority. Where the authority acts as Appellate Authority for more than

one State and where the authority has power to change its place of sitting, then, a legal fiction is applied that when it deals with a case of a particular State, its seat is deemed to be within the State concerned and it is the place of locality 'in the eye of law'. Therefore, the Writ Petitions under Article 226 (1) of the Constitution in the Madras High Court are not maintainable.

(ii) In this case, the entire transaction took place only at Hyderabad. Admittedly, all the parties are at Hyderabad. There is no cause of action at Chennai. Merely because the order impugned has been passed by the Appellate Tribunal, which is situated at Chennai, the same, by itself, may not be considered to be a determinative factor, relating to the part of cause of action, compelling the High Court to decide the matter on merit. Therefore, Article 226 (2) also would not apply.

15. Regarding this contention, it shall be stated that we are of the considered opinion that this Madras High Court cannot be requested to usurp the jurisdiction of the Andhra Pradesh High Court, which is vested with the power of superintendence and review of the orders passed by the Tribunal at Hyderabad, by applying the prevailing law applicable to Andhra Pradesh.

16. Under Article 226 (1) of the Constitution, the High Court's jurisdiction depends upon the seat of the authority. In view of the fact that one DRAT is constituted for several DRTs within several States and for convenience the seat of DRAT is located at Chennai, the seat of the DRAT, in the eye of law, depends upon the place of DRT, whose order it deals with.

17. Of course, it is true that DRAT is situated at Chennai. But, by virtue of the legal fiction, the seat of the DRAT should be deemed to be within the State concerned. In other words, when the seat of the Appellate Authority is situated in one place for convenience; where the same authority acts as the Appellate Authority for more than one State and where the authority has the power to change its place of sitting, then a legal fiction applies that when it deals with a case of a particular State, its seat is deemed to be within the State concerned. This is the location of the Appellate Authority 'in the eye of law'.

19. In this connection, it would also be relevant to refer to Rule 3 of The Debts Recovery Appellate Tribunal (Procedure) Rules, 1994.

"3. Sitting of Appellate Tribunal - An Appellate Tribunal shall hold its sittings either at headquarters or at such other place falling within its jurisdiction as it may consider convenient."

According to this Rule, an Appellate Tribunal can hold its sitting either at headquarters or at such other place falling within its jurisdiction as it may consider convenient.

20. Thus, it is clear that the location of the Appellate Tribunal may vary from time to time according to its convenience. In the present case, as indicated above, the Appellate Tribunal is, in the eye of law, located at Hyderabad, though, for convenience, it holds office at Chennai, as the same Presiding Officer has been discharging the same function for other States.

21. Admittedly, this Madras High Court has no power of jurisdiction or superintendence, either administrative or judicial, over the Debts Recovery Tribunal at Hyderabad. Merely because the Appellate Tribunal is situated within the territorial limits of this High Court, such a fact cannot confer jurisdiction to scrutinise the order passed by such Tribunal in any appeal preferred against the decision of the original Tribunal, over which this Court has no power of superintendence.

22. By virtue of Article 226 (1) of the Constitution, this High Court shall have power to issue appropriate orders to all Courts and Tribunals throughout the territories of this State, in relation to which it exercises jurisdiction, and can call for the returns from such Tribunals and may also make order, issue general rules and prescribe forms for regulating the practice and proceedings of such Courts and Tribunals. If a Tribunal is constituted as Appellate Tribunal for hearing appeals against decisions of more than one original Tribunal situated in different States, in our view, in such a case, for the purpose of challenging the orders of such Appellate Tribunals by way of an application under Article 226 or 227 of the Constitution, the aggrieved party is to approach the High Court of that State within the territorial limit of which the original Tribunal exercises jurisdiction in a particular case.

23. While entertaining the petitions under Article 226 of the Constitution of India, this Court must ascertain as to what is the effect of interference prayed for in the Writ Petitions. If the result of such intervention is that an order of a Tribunal, over which this High Court has no power of superintendence, has to be subjected to scrutiny, then, in that case, this High Court should refuse to entertain such a request. Therefore, there is no difficulty for this Court to conclude that this High Court would not entertain the Writ Petitions mainly on two reasons, namely, (i) it would amount to interfering into and usurping the power of the Andhra Pradesh

High Court, which alone is vested with the power of going into the legality or otherwise of the order of the Tribunal at Hyderabad, which has been confirmed by the Appellate Tribunal at Chennai and (ii) the seat of the Appellate Authority must be deemed to be within Hyderabad, though the building of the Office is situated at Chennai, for convenience. "

17.00 In view of what is stated above in the Division Bench judgment, the writ petitions are dismissed. No costs. Consequently, W.P.M.P.No.10886 of 2006 and W.V.M.P.No.1412 of 2006 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gr.

To

1. M/s. Vijaya Bank,
Mayo Hall Branch,
PU Building,
MG Road, Bangalore-560 001.
2. The Debt Recovery Appellate Tribunal,
Indian Bank Building,
4th Floor, 55, Ethiraj Salai,
Chennai-600 008.

2 cc To Mr.P.R.Seetharaman, Advocate, SR.973.
2 cc To M/S.Ramalingam & Associates, Advocate, SR.1365.

AKM(CO)
RVL 12.01.2007

IN W.P.Nos 9748
and 9749.of 2006

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